[3] nor does it require the Administrator to recommend prosecution to the Attorney General; [4] while the Attorney General, in the performance of his official duties, has power to decide, or delegate power to decide, whether a particular statute has been violated and, if so, whether to initiate prosecution, his judgment is not in any way controlled by a report from the Federal Security Administrator, much less by the declaration or recommendation of an officer subordinate to the Federal Security Administrator; [5] specifically, he is under no 'mandatory duty' to do anything under such circumstances. This is exactly the type of official duty, the performance of which is not subject to control by mandatory process.[7] The language of appellant's contention in this respect is phrased with interesting disingenuity. It urges its right to a judgment declaring that its proposed business activity will not constitute a violation of the law, while in the same breath it asserts the mandatory duty of the Attorney General to prosecute it for violating the law.

"It does not appear just how far appellant would carry its argument concerning the threat of prosecution which, it says, is implicit in the statute by reason of its civil and criminal sanctions. Here again the argument reduces itself, very quickly, to an absurdity. Certainly such sanctions are convincingly present in laws proscribing homicide and robbery. But, presumably, it would not be seriously contended that one who contemplated killing another, or taking his property, could establish his right to a declaratory judgment, upon a hypothetical case of murder or robbery, by requesting in advance the advice of a grand jury or the attorney general. The fact that one wants[8] or needs legal advice is not sufficient.

"We conclude that the present case was not an appropriate one for a declaratory judgment and that there is no showing of abuse of discretion in the action of the District Court dismissing the complaint.[9] The Supreme Court has said the pronouncements, policies, and programs of a Government administrative agency do not give rise to a justiciable controversy, save as they have fruition in action of a definite and concrete character, constituting an actual or threatened interference with the rights of persons complaining.[10] To permit suits for declaratory judgments upon mere informal, advisory, administrative opinions might well discourage the practice of giving such opinions, with a net loss of far greater proportions to the average citizen than any possible gain which could accrue.[11] An example of an administrative program, which *was* put into action of such definite and concrete character as to create an actual controversy, may be found in *Wallace* v. *Currin*.[12] The present case constitutes no counterpart of the *Wallace* case. Here, there was no more than an advisory opinion given in response to a hypothetical question.[13] There, the Secretary of Agriculture had virtually taken over the tobacco market of Oxford, North Carolina, by an order effective as of a certain date. The complainants in that case, warehousemen whose business was the selling of tobacco on the Oxford market, were the persons directly affected by the order. Failure to comply with its terms would result in liability for criminal penalties, without more. Here, no order was issued, no steps were taken to put any administrative program into action; appellant was far removed from penalties of any kind. This was not enough.[14]

"No doubt, a persuasive argument can be made for extending the use of advisory opinions to all situations in which conflicts may impend, between private business and government agencies, in the working out of policies and programs. Much of the uncertainty of business management could, perhaps, thus be eliminated. What a comfort it would be, if a declaratory judgment could be made as available as an interoffice memorandum, whenever a board of directors meets to consider a proposed new venture. But that millenium has not yet arrived."

Affirmed.

5005. Adulteration of poppy seed. U. S. v. 1 Container (100 Pounds) of Poppy Seeds. Default decree of condemnation and destruction. (F. D. C. No. 7389. Sample No. 77032-F.)

Examination showed this product to be white poppy seeds artificially colored with an unidentified coal-tar color, so that the product resembled the seeds of the so-called blue poppy, a more valuable product.

On April 23, 1943, the United States attorney for the Middle District of Pennsylvania filed a libel against 1 unlabeled metal container, containing 100 pounds, of

[7] Hammond v. Hull. U. S. App. D. C. , 131 F. (2d) 23, and cases there cited; United States ex rel. White v. Coe, 68 App. D. C. 218, 95 F. (2d) 347, and cases there cited; United States ex rel. Roughton v. Ickes, 69 App. D. C. 324, 101 F. (2d) 248.
[8] F. W. Maurer & Sons Co. v. Andrews, 30 F. Supp. 637, 638.
[9] Brillhart v. Excess Insurance Co., 316 U. S. 491, 494.
[10] Ashwander v. T. V. A., 297 U. S. 288, 324, 325.
[11] See BORCHARD, DECLARATORY JUDGMENTS, (2d ed. 1941) 919, *et seq.*
[12] 95 F. (2d) 856; *aff'd* 306 U. S. 1.
[13] Aetna Life Insurance Co. v. Haworth, 300 U. S. 227, 241.
[14] Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 429.

poppy seed at Wilkes-Barre, Pa., alleging that the article had been shipped in interstate commerce on or about February 24 and March 2, 1942, by the Royale Popcorn Co., Inc., from Cleveland, Ohio; and charging that it was adulterated in that inferiority had been concealed by the addition of artificial color, and in that artificial color had been added thereto or mixed therewith so as to make it appear better or of greater value than it was.

On June 2, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

5006. Adulteration of poppy seeds. U. S. v. 13 Bags of Poppy Seeds. Default decree of condemnation and destruction. (F. D. C. No. 9375. Sample No. 26561-F.)

On February 16, 1943, the United States attorney for the District of Minnesota filed a libel against 13 bags, containing a total of 1,027 pounds, of poppy seed at Little Falls, Minn., alleging that the article had been shipped in interstate commerce on or about October 16, 1942, by Abecassis & Abelson, Inc., from New York, N. Y.; and charging that it was adulterated in that it consisted in whole or in part of filthy substances, weevils and larvae.

On June 18, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

5007. Adulteration of coriander and cumin seed. U. S. v. 384 Sacks of Coriander Seed, 298 Bags and 200 Bags of Cumin Seed. Consent decree of condemnation. Products ordered released under bond for segregation and destruction of the unfit portions. (F. D. C. No. 9333, 9353, 9527. Sample Nos. 5654-F, 5662-F, 6086-F.)

Samples of these products were found to contain beetles, larvae, flies, pupae, insect excreta, and insect fragments.

On February 8 and 9, and March 10, 1943, the United States attorney for the Eastern District of Missouri filed libels against 384 sacks of coriander seed and 498 bags of cumin seed, at St. Louis, Mo., alleging that the articles had been shipped in interstate commerce within the period from on or about June 10, 1942, to January 26, 1943, by the P. H. Petry Co. from New York, N. Y.; and charging that they were adulterated in that they consisted wholly or in part of filthy substances.

On March 20, 1943, the David G. Evans Coffee Co. having appeared as claimant for the lot of coriander seed and one of the lots of cumin seed, and Jas. H. Forbes Tea & Coffee Co. having appeared for the remaining lot of cumin seed, and all parties having admitted the allegations of the libels and consented to the entry of decrees, judgments of condemnation were entered and the products were ordered released under bond for segregation and destruction of the unfit portions, under the supervision of the Food and Drug Administration.

5008. Adulteration of curry powder and paprika. U. S. v. 21 Cases of Curry Powder and 112 Cases of Paprika. Default decree of condemnation. (F. D. C. No. 9493. Sample Nos. 15766-F, 15769-F.)

On February 26, 1943, the United States attorney for the District of Utah filed a libel against 21 cases of curry powder and 112 cases of paprika, each case containing 48 tins, at Ogden, Utah, alleging that the article had been shipped in interstate commerce on or about January 7, 1943, by Tiedeman-McMoran from San Francisco, Calif.; and charging that they were adulterated in that they consisted wholly or in part of filthy substances, rodent hairs and insect fragments, and in that the articles had been prepared under insanitary conditions whereby they may have become contaminated with filth. The articles were labeled in part: (Tins) "Curry Powder * * * Tropic Brand [or "Paprika Tropic Brand"] * * * R. C. Pauli and Sons San Francisco, Calif."

On June 5, 1943, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

5009. Adulteration of unbleached ginger. U. S. v. 50 Bags of Unbleached Ginger. Consent decree of condemnation. Product ordered released under bond for segregation and destruction of the unfit portion. (F. D. C. No. 9491. Sample No. 6722-F.)

On or about March 4, 1943, the United States attorney for the Eastern District of Missouri filed a libel against 50 bags of unbleached ginger at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about August 11, 1942, by the P. H. Petry Co. from New York, N. Y.; and charging that it was adulterated in that it consisted wholly or in part of filthy substances, larvae, insect fragments, insect excreta, and worm tunnels.

On March 20, 1943, the Jas. H. Forbes Tea & Coffee Co. of St. Louis, Mo., claimant, having admitted the allegations of the libel and consented to the entry of a decree, judgment of condemnation was entered and the product was ordered re-